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1/25/2007

Honorable City of Las Vegas City Council
c/o Department of Finance & Business Services
400 Stewart Avenue
Las Vegas, NV 89101

Re: NOTICE OF APPEAL of Denial in Case #N08-96306-9-000389

2007 JAN 30 P 4: 51

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Comes now Lia Hernandez, through her Attorney Charles Wright, filing a timely notice of appeal in the above mentioned case and providing sufficient answers and explanations addressing the concerns stated in the Boards denial and addressing those areas of error in both Law and Fact presented in material considered by the board in this application denial.

The board cited three areas of concern in their decision to deny this license which will be addressed in the order presented in the Boards denial letter. They are:

1. 6.24.050 License required
2. 6.24.070 License – Denial, Suspension, or Revocation
3. 6.02.090(A)(1) – Action on Application – Refusal Grounds

1. 6.24.050 License required

The Investigation cites an abuse issue that occurred in June 2005 which led to the “discovery” of the illegal daycare and the issuance of the cease and desist ticket. This event appears to be offered to both shows the date of original citation and to taint the board’s view of the capability and quality of care that Lia would provide if a license were granted.

This incident ended without action by the LVMPD Abuse and Neglect unit and with a completely satisfactory result for the parent of the child that had the bruise. Lia’s son was left to briefly supervise the child while Lia took care of an immediate need. The son had done this same duty previously. He was of suitable age and discretion to be trusted to do so. He hit the child causing the bruise; he later apologized to the parents and the child in a face to face meeting. This

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meeting was held to both teach Lia's son the nature of his offense and offer closure to the affected family. The mother of the child that was bruised has expressed a strong desire to offer testimony before the Council as to the nature of the original incident and to the wonderful quality of care and as to the good and kind character of the applicant Lia Hernandez. She plans to have her children cared for by Lia when this license is eventually granted by the Council.

The investigator also points out that three children were present and being cared for when the June 2005 meeting took place, indicating that Lia was in the act of providing illegal daycare when the officers walked in. This is a wrong assumption. These children were not under Lia's paid care. Another care provider in the neighborhood had these children in her care when she was called away for an unscheduled obligation. This care provider asked that Lia watch the children as a favor while she tended to the obligation. Lia obliged and these children were in the home at the time of the citation.

Further, the violation is stated to have continued until an approximated date of September of 2006. This is not the case. The special needs child that was picked up by the CCSD handicapped bus at (or near) Lia's residence continued to be picked up there until June 2006 which was the end of the school year. This child was enrolled in the elementary school that Lia's residence is zoned for when Lia began to care for him prior to issuance of the cease and desist ticket. He continued to meet the bus there, from his mother's car, for the remainder of the school year to avoid changing schools as the mother greatly desired to keep her son in this school she was not zoned for. Lia, in error, assisted in this by not insisting that the bus route be changed and further by telling her son to "just say he's still in my care if anyone asks why he's still in (this) school." Her son was later questioned during the investigation and following instructions said the childcare was ongoing in accordance with the earlier instructions.

Lia volunteered the information about her unlicensed daycare during a discussion with these officers about licensing. She was told she would never get a license now that she had been "caught" in the act. She debated for long time whether to pursue licensure or if it was impossible as she was told. Contrary to the representation of Lia's stance on licensure contained in the investigation report, Lia thought it to be no "big deal" because she was providing quality care and had all intentions of applying for licensure from the beginning. She was not doing so in a blatant or flippant disregard of laws and regulations. She had no thought that her actions in delaying the obtaining of a license would result in what appears to be the implication of a life sentence as to the inability to obtain a license in the City of Las Vegas. Other licenses, business, contracting, and drivers for example, are not denied because someone has done any of these in an

ur licensed capacity. Instead, there is a penalty applied to the application process and the attempt to become legitimately licensed is not barred by the prior infraction. We ask that the same standard be applied here as there are other facilities known to this party that were granted this same license after committing the same offense.

2. 6.24.070 License – Denial, Suspension, or Revocation

"The Director may: (A) Deny an applicant a license if: (1) The application is incomplete or contains false, misleading or fraudulent statements with respect to any information that is required in the application;"

The investigation points out that Lia was not truthful in her answers, answering "no" on the question that asks if the applicant has ever been "cited, or charged with, or formally accused of any violation of a statute, regulation, or code of any local, state, county, municipal, provincial, federal or national government" to which Lia honestly, in her belief, answered no. The discrepancy lies in the definition of the Utah department of health actions referred to in the investigation report. There was no formal provider correction required by these statements of findings. The entire action around these two referred incidences was very informal, no citation, no remedial measures requirement, and no adjudication type procedure. This is not offered as proof that these actions do not fall within the intended inclusions of the question. Merely it serves as a basis for the belief that Lia had when she answered the question. There was no apparent reason to believe that she had in fact been "cited, or charged with, or formally accused of any violation of a statute, regulation, or code of any local, state, county, municipal, provincial, federal or national government."

Where the investigator indicated that Lia's not volunteering additional information during indicates deceit. This is far too strong of an allegation to be supported by a simple assumption. The investigator asked about a specific date and incident. The discussion was frank and forthcoming on Lia's part. She answered the question that was posed to its fullest extent and hid nothing. The failure of the investigator to ask the appropriate question or follow-up question can not be held as an omission or attempt to deceive on the part of the questioned.

Conclusion

Lia humbly requests that this honorable Council grant her the license required to operate an in home daycare. She pleads for understanding in very isolated and limited offenses when compared with her decades-long history of providing care to children. Lia is willing to submit to any additional restrictions that this Council sees fit in this situation to alleviate any concerns that

may exist on the part of the board. Lia humbly requests to be heard and questioned before this Council at the earliest possible date.

Submitted by and through her Attorney Charles T. Wright this 25th day of January 26, 2007.

Charles T. Wright
N / Bar #10285

By: JN
